

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Before:

Chairman Gleiman, Vice Chairman LeBlanc,
Commissioners Covington, Goldway, and Omas

Renewal of Experimental Classification and Fees
For Weight-Averaged Nonletter-Size
Business Reply Mail

Docket No. MC99-1

OPINION AND RECOMMENDED DECISION

APPROVING

REVISED STIPULATION AND AGREEMENT



Washington, DC 20268-0001
May 14, 1998

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I. Introduction and Summary

The Commission adopts a revised stipulation and agreement ("revised agreement") as the basis for its opinion and recommended decision on the Postal Service's Docket No. MC99-1 request for temporary renewal of the existing experimental classification and fees for qualifying weight-averaged nonletter-size Business Reply Mail (BRM).¹ The revised agreement does not alter the duration of the relatively brief extension the Service initially requested, but makes material changes in fees.

The revised agreement gained wide support. It was signed by all full participants in this proceeding. One limited participant also signed it, and the other limited participants did not oppose it.

If acted upon favorably by the Governors, the Commission's decision adopting the revised agreement will allow the Service to continue the current weight-averaging experiment beyond its scheduled June 7th, 1999 expiration.² The extension runs until a date certain (February 29, 2000) or until implementation of the permanent classification and fees proposed in a pending companion case (Docket No. MC99-2), whichever occurs first. During the extension, service fees on qualifying pieces, paid on a per-piece basis, will be reduced from 3 cents to 1 cent. Monthly maintenance fees will be reduced from \$3000 to \$600. The set-up fee, which entails a one-time charge of \$3000, will be eliminated. In effect, this means the fees during the extension phase will be identical to the permanent fees the Service has requested in Docket No. MC99-2,

¹ March 10, 1999 Request of the United States Postal Service for a Recommended Decision on Renewal of Experimental Classification and Fees for Weight-Averaged Nonletter-size Business Reply Mail (hereafter, "Request"). See also Revised Stipulation and Agreement April 30, 1999 accompanying April 30, 1999 Motion [of the Postal Service] for Consideration of Revised Stipulation and Agreement.

² As noted in the Revised Stipulation and Agreement, the intention is that the recommended changes, if approved by the Governors, would take effect upon the expiration of the existing experiment on June 7, 1999. Revised Agreement at 3 (paragraph 2).

rather than the same as those in effect during the original phase of the experiment. The following table provides a comparison.

| Fee Comparison | | |
|---------------------------------|--|---|
| | Original Experiment (MC97-1) and Initial Stipulation & Agreement in MC99-1 | Revised Stipulation and Agreement in MC99-1 and MC99-2 Proposal |
| Service Fee (per piece) | 3¢ | 1¢ |
| Maintenance Fee (monthly) | \$3000 | \$600 |
| Set-up Fee (one-time charge) | \$3000 | Eliminated |

Source: Adapted from Fee Schedule 931 in Docket No. MC99-1 Revised Stipulation and Agreement (attached to April 30, 1999 Motion [of the Postal Service] for Consideration of Revised Stipulation and Agreement and Attachment B (Fee Schedule 931) in the Postal Service's Docket No. MC99-2 Request.

The Commission appreciates the Postal Service's efforts in coordinating this filing with its Docket No. MC99-2 request. It also commends all who participated in reaching a negotiated settlement of this case prior to the impending expiration of the Service's experimental authority. This greatly increases the likelihood of avoiding an unexpected increase in the service fee for participants in the experiment and a needless disruption in operations and service. The Commission further hopes that the Service's apparent success, to date, in addressing the needs of users of nonletter-size

BRM will encourage postal management and interested mailers not only to achieve an early resolution of Docket No. MC99-2, but also to work on other systemwide aspects of BRM operations that have long required serious attention.

II. The Postal Service's Filing

Background. The Postal Service has filed three related cases dealing with improvements in services and fees for nonletter-size BRM in a relatively short period. The first — Docket No. MC97-1 — authorized a two-year experiment with weight-averaging and reverse manifesting as alternatives to the standard “piece-by-piece” method of accounting for this mail.³ Weight averaging entails developing an average piece weight factor and an average piece count factor. These factors are applied to the bulk weight of future BRM volumes (on a per-sack basis) to assess postage due and per-piece fees. Periodic sampling is performed to update the factors. Reverse manifesting uses the mailer’s computerized database to calculate the weight and postage for each BRM piece received and to produce a tabulation for verification by the Postal Service. Weight is determined either by weighing each piece or by using predetermined (“coded”) weights.

The instant case involves a request to extend the experiment, but only as it relates to weight averaging. A companion case (Docket No. MC99-2), filed at the same time as this case, requests permanent classification status and fees for qualifying weight-averaged BRM. The Service has not requested an extension or permanent status for the reverse manifesting method, given difficulties with recruitment and implementation that arose during the original phase of the experiment. Thus, the classification and fees for reverse manifesting will automatically expire, by virtue of self-

³ The experiment was authorized to be conducted from June 8, 1997 through June 7, 1999.

executing provisions in the Domestic Mail Classification Schedule (DMCS), as originally scheduled.⁴

Procedural history. The Postal Service filed the request underlying this opinion and recommended decision, along with related motions, on March 10, 1999. The request included five attachments, and was accompanied by the supporting testimony of witness Kiefer (USPS-T-1) and a related exhibit. The attachments consisted of proposed changes to the DMCS; the certification required by Commission rule 54(p); audited financial statements; an index of testimony; and a statement of compliance with (or requests for waiver of) provisions in Commission rules 54 and 64. One of the related motions sought authorization of settlement proceedings that would use, as a starting point, a proposed stipulation and agreement. The terms of that document effectively extended the current weight-averaging experimental fee schedule to February 29, 2000 or the date on which fees requested in Docket No. MC99-2 are implemented, whichever occurs first. March 10, 1999 Motion of the United States Postal Service to Establish Procedural Mechanisms Concerning Settlement. The other motions sought waiver of various requirements in the Commission rules of practice. Motion of the United States Postal Service for Waiver of Rule 67c(a)(1) and Motion of the United States Postal Service for Waiver of Certain Filing Requirements Incorporated in the Commission's Rules of Practice and Procedure (both filed March 10, 1999).

In a comprehensive order, the Commission provided notice of the Service's request, designated the case as Docket No. MC99-1, and granted the Service's request

⁴ The Commission accepts the Service's suggestion regarding the mechanics of identifying related changes in the Domestic Mail Classification Schedule (DMCS). Accordingly, this means that subsections relating exclusively to the reverse manifest accounting method, which expire after June 7, 1999, will be designated as "Reserved" and the experimental weight averaging subsection numbers of DMCS § 931 will be unchanged during the extension. Later, after termination of the weight-averaging experiment, the subsection numbers for the expired reverse manifest provisions and those relating to experimental weight averaging can be eliminated at the same time. See Docket No. MC99-1 Request at 4 (fn. 2).

for authorization of settlement proceedings. Among other things, the order also appointed the Commission's Consumer Advocate to represent the interests of the general public, appointed Postal Service counsel as the settlement coordinator, and set April 5 and April 6, 1999, respectively, as the deadline for intervention and the date for a prehearing conference. PRC Order No. 1223 (issued March 16, 1999); *see also* 64 Federal Register 13613-13617. In a related notice, Commissioner George A. Omas was appointed presiding officer. March 16, 1999 Chairman's Notice Designating Presiding Officer. The Service's motions for waiver of certain filing requirements and for waiver of rule 67c(a)(1) were granted in Presiding Officer's Ruling No. 2 (issued April 9, 1999), following an opportunity for participants to respond.

Settlement conferences were held on April 6, 1999 and on April 20, 1999. The latter was preceded by a technical conference focusing on witness Schenk's Docket No. MC99-2 testimony (USPS-T-3). On April 22, 1999, Postal Service counsel filed a status report apprising the Commission that substantial progress had been made in negotiating a settlement. On April 30, 1999, the Postal Service, on behalf of itself and District Photo Inc. (District), Mystic Color Lab (Mystic), Seattle Filmworks, Inc. (Seattle), Time Warner Inc. (Time), and York Photo Labs (York), filed a motion asking that the Commission "issue an opinion and recommended decision which is based upon the evidentiary record developed in this proceeding and which incorporates the DMCS and Fee Schedule changes" contained in the attachment accompanying the revised agreement. Motion for Consideration of Revised Stipulation and Agreement (April 30, 1999) at 1.

Noting that the terms of the revised agreement differ in certain material respects from those in the initial stipulation and agreement, the Service stated that it believes there is substantial record evidence to support the DMCS and Fee Schedule changes accompanying its March 10, 1999 request, but acknowledges that the same record provided substantial evidence to support the alternative changes. *Id.* at 1-2. Thus, the

Service said it joined the other settlement parties (those identified above) in urging the Commission to adopt the classification and alternative fee proposals reflected in the attachment. *Id.* at 2. It also said the OCA had indicated it would join the other full participants in support of the revised agreement. *Id.* The OCA's subsequent response to the Service's motion confirmed this representation. May 6, 1999 OCA Response to United States Postal Service Motion for Consideration of Revised Stipulation and Agreement.

The Service also stated that all the limited participants authorized the Service to indicate that none opposes the revised agreement. This includes the Advertising Mail Marketing Association (AMMA), Brooklyn Union (Brooklyn Union) Gas Company, Douglas Carlson, Key-Span Gas East Corporation (Key-Span), Long Island Power Authority (the Authority), and David Popkin. (Later, the Service filed Douglas Carlson's signature page). United States Postal Service Notice of Filing of Additional Signature Page [of Douglas Carlson] for Revised Stipulation and Agreement (May 5, 1999).

In accordance with paragraph 2 of the revised agreement, relevant evidentiary material was entered into the record. The record was closed on May 12, 1999.

P.O. Ruling MC99-1/3.

A. Witness Kiefer's Presentation

Witness Kiefer's supporting presentation (consisting of testimony, a related exhibit and interrogatory responses) addresses why the Service seeks renewal of the weight-averaging experiment; how the filing meets the Commission's requirements for experimental changes [39 CFR §3001.67]; and how the proposed extension meets the classification and pricing requirements of 39 U.S.C. §§ 3623(c) and 3622(b).

Experimental protocol and operations. Witness Kiefer's review of the current experiment notes that despite attempts to attract participants from a spectrum of industries, all participants in the weight-averaging experiment are in the film processing

industry. USPS-T-1 at 2. He also confirms that the Service developed and executed the data collection plan described in Postal Service witness Fronk's Docket No. MC97-1 testimony (USPS-T-3, Appendix B.) He further notes that his testimony in Docket No. MC99-2 (USPS-T-4), along with that of witnesses Ellard and Schenk (USPS-T-3 and USPS-T-4, respectively) present additional details regarding the experiment, including cost and market studies. *Id.* at 2-3.

Kiefer says that under the terms of the experiment, the Service has been monitoring weight averaging operations at four field sites (New London, Connecticut; Seattle, Washington, Washington, DC, and Parkersburg, West Virginia). *Id.* at 3. In connection with these operations, he observes:

Although the data compiled thus far provide a solid basis for requesting establishment of a permanent classification and fees, our experience . . . has demonstrated that additional effort is necessary to complete the development of the technical resources and the organization of the appropriate management oversight structure that will ensure proper implementation of a permanent classification and fees. These efforts currently are ongoing, but we do not anticipate that the full implementation package will be ready for roll-out, even for the ten potential customers identified in USPS witness Ellard's Docket No. MC99-2 testimony (USPS-T-2), before the experiment expires on June 7, 1999, or immediately thereafter.

Id. at 3-4.

Technical and administrative issues. Kiefer says the Service has determined that the experimental software shows great potential, but believes the refinements needed for permanent implementation and related testing and documentation will not be completed by the scheduled expiration date. He indicates that resolution of some technical issues will be relatively straightforward, but that others deemed critical to

successful implementation will require considerably more time and effort. He identifies operator errors as one of these issues. Id. at 4-6.

Administrative issues. Kiefer says that oversight of the current experiment has been coordinated with headquarters in conjunction with witness Schenk. He says the Service is presently determining how best to manage a national rollout of nonletter-size BRM weight averaging and identifies numerous objectives that must be completed to insure a smooth transition. Id. at 7. These include developing and documenting standard operating procedures for implementation, reporting, accounting and oversight for the new permanent classification, similar to those in Draft Publication 405.⁵ They also include refining and implementing training procedures for the national rollout of the weight averaging method and determining the system/database administrator for the program, along with the software, hardware, and training needed to set up remote access to all weight averaging sites. Other objectives entail establishing the appropriate channels of communication and management responsibility, control and testing prior to a national rollout and developing a process for monitoring the weight averaging results, especially the precision of the revenue estimates. Id. at 7.

Duration. Witness Kiefer says the Service has proposed that the extension be in effect until implementation of the permanent classification and fees requested in Docket No. MC99-2, or February 29, 2000, whichever occurs first, because management believes it will need at least several months beyond June 7th (the experiment's originally scheduled expiration date) to be ready for a national rollout. Id. at 8. With respect to requesting that the Commission approve alternative termination dates, he says: "Although we have requested that the experiment be renewed for a period that could expire as late as February 29, 2000, we do not anticipate needing that much time to be ready" for implementation of the permanent classification and fees. Id. at 8.

⁵ The Service submitted this publication in Docket No. MC97-1 as USPS-LR-EBR-3.

Additional considerations. In addition to providing the Service with the time needed to resolve technical and administrative issues, witness Kiefer cites several other reasons why the Commission should recommend the requested extension. He contends, for example, that it will permit the Service to work carefully, without any risk associated with undue haste, in the establishment of its implementation plans. *Id.* at 8. He also says it will permit the Commission to conduct the litigation of the concurrent request (Docket No. MC99-2) on a schedule that is not unduly influenced by any party's concerns about the consequences of a time lag between June 7, 1999 and the implementation date of permanent fees. *Id.* at 8-9. Finally, he says renewal will protect participants from suffering the "rate shock" inherent in a reversion to the standard per-piece accounting fee of 8 cents. *Id.* at 9 (fn. 4).

Classification criteria. Witness Kiefer sets out the statutory classification factors (39 U.S.C. § 3623(c)(1)-(6)) and discusses their relationship to the Service's proposal.⁶ *Id.* at 10-11. In line with the Service's general practice, Kiefer addresses criterion 1 (the proposal's fairness and equity) following his assessment of the other factors and identifies criteria that he either considers inapplicable or that he does not invoke. In this case, he says criterion 4, regarding the importance of offerings not requiring highly reliable and speed delivery) is not an issue. He also does not identify any matter for the Commission's consideration under criterion 6's "umbrella" provision for other unspecified factors. With respect to the remaining criteria, Kiefer finds that the

⁶ These factors (and abbreviations used here) are: 39 U.S.C. § 3623(c)(1), the establishment and maintenance of a fair and equitable classification system for all mail (fairness and equity); 39 U.S.C. § 3623(c)(2), the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail (relative value and desirability); 39 U.S.C. § 3623(c)(3), the importance of providing classifications with extremely high degrees of reliability and speed of delivery (highly reliable and speedy delivery offerings); 39 U.S.C. § 3623(c)(4), the importance of providing classifications which do not require an extremely high degree of reliability and speed of delivery (offerings not needing highly reliable and speedy delivery); 39 U.S.C. § 3623(c)(5), the desirability of special classifications from the point of view of both the user and of the Postal Service (perspective of user and Postal Service on special classifications); and 39 U.S.C. § 3623(c)(6), such other factors as the Commission may deem appropriate (other factors).

proposal furthers criterion 2 (relative value and desirability) and criterion 5 (the perspective of users and the Postal Service) in several significant ways. He notes, for example, that the Service has concluded, based on the current experiment, that weight averaging lowers costs relative to the standard piece-by-piece BRM rating procedure. *Id.* at 11. He also says that the proposal offers recipients of nonletter-size BRM the opportunity to pay an accounting fee that is much more in line with Postal Service accounting costs. *Id.* He contends that the cost savings and the lower fees make renewal of the weight averaging classification desirable to both the Postal Service and the BRM recipients. *Id.*

Kiefer also maintains that BRM offers a valuable service to businesses and their customers. Specifically, he notes that it gives customers convenient access to products and services available through the mail and provides businesses with a more cost-effective means than prepaid postage envelopes to offer postage-paid communication to their customers. *Id.* at 12. He says this is especially true in the case of nonletter-size BRM, which often varies in weight. *Id.* He also notes that alternatives are cumbersome and expensive. *Id.* Thus, he says the Service's proposed renewal of the weight-averaged nonletter-size BRM classification maintains the valuable advantages of BRM for both businesses and their customers who send them nonletter-size mail, while reducing the costs of offering this service. *Id.*

In terms of the third criterion, which requires consideration of the importance of providing classifications with highly reliable and speedy delivery, witness Kiefer observes that prompt turnaround of customer orders is of obvious business importance to many companies. *Id.* He maintains that by keeping the cost of mailing nonletter-size BRM down, the current weight averaging classification, if continued, would maintain the practical availability of a speedy delivery option for businesses. *Id.* He also says that time saved with weight averaging should allow recipients to receive their mail more expeditiously than if this mail were individually counted and rated. *Id.*

Kiefer's overall assessment is that the Service's proposal meets the needs of customers by providing a relatively low-cost option for receiving BRM and compensates the Service for the activities it undertakes, without adversely affecting the public, businesses, or other mail classes, and therefore consistent with criterion 1's standard of fairness and equity. *Id.* at 12-13.

Pricing criteria. Witness Kiefer also sets out the pricing criteria in section 3622(b) and discusses how the proposed renewal satisfies them.⁷ As with the classification criteria, pricing criterion 1 calls for consideration of the fairness and equity of the proposal, and Kiefer also treats this as a comprehensive assessment. He also identifies the pricing criteria that he does not consider relevant or does not invoke. These are criterion 6 (degree of mail preparation); criterion 8 (ECSI), and criterion 9, other factors not specified in section 3622(b).

With respect to criterion 2 (the value of mail service), Kiefer notes that BRM provides a highly valuable service by giving customers convenient access to companies offering products and services through the mail and by providing recipients with a cost-effective method of paying postage on correspondence or shipments. He asserts that

⁷ These factors (and abbreviations used here) are: 39 U.S.C. § 3622(b)(1), the establishment and maintenance of a fair and equitable schedule (fairness and equity); 39 U.S.C. § 3622(b)(2), the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery (value of mail service); 39 U.S.C. § 3622(b)(3), the requirement that each class of mail or type of service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type (cost floor); 39 U.S.C. § 3622(b)(4), the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters (effect of increases); 39 U.S.C. § 3622(b)(5), the available alternative means of sending and receiving letters and other mail matter at reasonable cost (available alternatives); 39 U.S.C. § 3622(b)(6), the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service (degree of mailer preparation); 39 U.S.C. § 3622(b)(7), simplicity of structure for the entire schedule and simple, identifiable relationships between the rate or fees charged the various classes of mail for postal services (simplicity); 39 U.S.C. § 3622(b)(8), the educational, cultural, scientific, and informational value to the recipient of mail matter (ECSI); and 39 U.S.C. § 3622(b)(9), such other factors as the Commission deems appropriate (other factors).

renewing the experimental weight-averaging classification will maintain these advantages for businesses and their clients, while reducing the costs of offering this service.

With respect to criterion 3 (the cost floor), Kiefer notes that the Service's proposed fees are the same as those in the current experiment, which the Commission found satisfactory in its Docket No. MC97-decision. *Id.* at 15. He also says that witness Schenk's Docket No. MC99-2 testimony (USPS-T-3) demonstrates the current fees will continue to satisfy criterion 3. *Id.* With respect to the effect of rate increases (criterion 4), Kiefer asserts that retention of existing weight averaging fees for nonletter-size BRM would not adversely affect the general public, business mail users or postal customers. *Id.*

Kiefer identifies a number of available non-postal alternatives (criterion 5) for transmitting communications and other matter commonly sent by letter-size BRM (such as toll-free telephone numbers, fax, e-mail, wire transfers, and credit cards), but concludes that these do not appear relevant for much of the material currently or potentially sent as nonletter-size BRM, such as exposed film, large documents, photographs, videos, and similar materials. He also notes there are few, if any, alternatives that allow the mailer to send this kind of nonletter-size matter free of charge, and none that offers a price similar to the postage and fees paid by the typical nonletter-size BRM piece. *Id.* Thus, he concludes that establishing this classification will have negligible impact on alternative means of sending nonletter-size BRM.

Kiefer observes that although criterion 7's concern with simplicity appears to suggest that the number of rate and fee alternatives be kept to a minimum, a higher degree of complexity is not unusual for classification and fee schedules likely to be used by sophisticated businesses or other institutional customers, and characterizes BRM as a service of this type. *Id.* at 16. Moreover, he says pursuit of simplicity needs to be balanced with recognition of cost savings and the goal of maintaining more

complex fee relationships that are identifiable. *Id.* He asserts that bulk BRM recipients, already responsible for maintaining advance deposit accounts, should not regard temporary re-establishment of the current weight averaging BRM classification and fee schedule as inordinately complex. *Id.* Kiefer concludes, with respect to criterion 1 (fairness and equity), that the Service's proposal reflects a balanced consideration of all relevant criteria, meets the needs of customers by providing a relatively low-cost option for receiving BRM and compensates the Postal Service for the activities it undertakes in counting and rating this BRM. *Id.* at 17.

B. The Revised Stipulation and Agreement

The revised agreement appears as Appendix A. It was submitted, as noted in the introductory paragraph, pursuant to Commission rule 29⁸ and represents a negotiated settlement of all issues in this docket. The introductory paragraph further states that the signatories stipulate and agree to the matters addressed in parts I (Background) and II (Terms and Conditions). Part I summarizes pertinent procedural matters and reviews the status of the existing experiment. Part II consists of 10 numbered paragraphs. Paragraph No. 1 reiterates the introductory paragraph's representation that the revised agreement represents a negotiated settlement of all issues raised in this docket. Paragraph No. 2 states that the settlement parties agree, for this proceeding only, that witness Kiefer's testimony and interrogatory responses and the Service's Docket No. MC99-1 request and attachments provide sufficient reasons and substantial evidence justifying a decision recommending changes, coinciding with the end of the existing experiment on June 7, 1999, to the DMCS and the DMCS fee schedule 931, as amended by the DMCS and Fee Schedule provisions appended to the Revised Stipulation and Agreement. It also notes that the settlement

⁸ Rule 29, captioned "Settlement conferences" allows a participant to submit an offer of settlement in Commission proceedings and to request a conference. 39 CFR § 3001.29.

parties stipulate that any of the referenced materials not entered into the record, be so entered.

Paragraph No. 3 notes that the settlement parties stipulate that the DMCS and the DMCS fee schedule changes set forth in the attachment to the revised agreement are in accordance with the policies of title 39, United States Code and, in particular, the criteria and factors of 39 U.S.C. §§ 3622 and 3623. Paragraph No. 4 states that the revised agreement is offered in total and final settlement of this proceeding. It also notes the parties' agreement that they will file no further pleadings or testimony with the Commission in this proceeding, except for pleadings explicitly requested by the Commission and pleadings opposing or supporting the agreement. Paragraph No. 5 is a reservation of rights to withdraw from the agreement if the Commission adopts a decision that deviates from the classification and fees proposed in the revised agreement or if the Governors fail to approve the Commission's decision. Exercise of this right is conditioned on certain terms, including written notice within a specified period of time, and does not alter the operation of the revised agreement as to other signatories.

Paragraph No. 6 limits the extent to which the revised agreement pertains, and specifically notes that it does not extend to the merits of Docket No. MC99-2. Paragraph No. 7 limits the extent to which signatories are bound by the agreement. It also addresses the revised agreement's lack of precedential effect. Paragraph No. 8 reiterates that the revised agreement relates exclusively to the appended specific experimental weight-averaged nonletter-size BRM proposals, and is not intended to bind or prejudice parties in any other proceeding. It also notes that this understanding of the intended consequences of the agreement applies equally to all constituent parts of the agreement.

Paragraph No. 9 asks that the Commission expeditiously issue a decision recommending adoption of the DMCS and fee schedule provision appended to the

revised agreement , and that such decision propose that the applicable classification and fees be made effective for the extension of the experiment.

Paragraph No. 10 states the revised agreement represents the entire agreement of the signatories, and supersedes any understandings or representations not contained in it.

C. Parties' Positions

The revised agreement was signed by the Postal Service, the OCA and all other full participants in this proceeding. They are: District Photo, Mystic, Seattle, Time Warner and York. Douglas Carlson, a limited participant, also signed the agreement. Other limited participants (AMMA, Brooklyn Union, Key-Span, the Authority, and David Popkin) authorized the Postal Service to state that they did not oppose the revised agreement.

III. Findings and Conclusions

Based on representations in the Service's motion for acceptance and an independent review of the record, the Commission finds that all participants have had an opportunity to participate in the settlement proceedings that led to the filing of the revised agreement. The Commission is also satisfied that all participants have had an adequate opportunity to comment on the appropriateness of the settlement as a resolution of the issues raised in this case, and to determine their position on its suitability as a basis for the Commission's decision.

Having made these determinations, the Commission has reviewed the evidentiary record pursuant to its statutory obligation under chapter 36 of title 39 of the U.S. Code. This includes an independent review of witness Kiefer's testimony, exhibit and interrogatory responses. This review leads to the conclusion that the proposed classification and fee changes meet the criteria of 39 U.S.C. §§ 3622 and 3623, and

conform to the policies of the Postal Reorganization Act. In particular, fairness and equity, which is both a pricing and costing consideration, will be advanced by allowing work to proceed on a permanent offering without disruption in operations or an increased service fee. Retaining this alternative to the standard BRM classification and fee schedule will provide qualifying BRM mailers, their customers, and the Postal Service with a more efficient method of conducting business. The Commission therefore recommends to the Governors of the Postal Service that the DMCS, including attendant fee schedules, be amended as set forth in Appendices One and Two of the accompanying Recommended Decision.

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Before Commissioners: Edward J. Gleiman, Chairman;
W.H. "Trey" LeBlanc III, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway;
and George A. Omas

Renewal of Experimental Classification and Fees
For Weight-Averaged Nonletter-Size
Business Reply Mail, 1999

Docket No. MC99-1

RECOMMENDED DECISION

(Issued May 14 , 1999)

The Commission, having considered the Revised Stipulation and Agreement filed and entered into the record of this proceeding, has issued its Opinion thereon. Based on that Opinion, which is attached hereto and made a part hereof,

It is ordered:


1. The Revised Stipulation and Agreement filed by the Postal Service is accepted.
2. That the Commission's Opinion and this Recommended Decision be transmitted to the Governors of the Postal Service and that the Governors thereby be advised that:
 - a. The Revised Stipulation and Agreement set forth in Appendix A is a fair and equitable resolution of pertinent issues, and its adoption as a means of amending the mail classification schedule is in the public interest.

b. The proposed amendments to the DMCS (set forth in Appendix Two) and the proposed fees (set forth in Appendix One) are in accordance with the policies of title 39, United States Code and the factors set forth in §§ 3622(b) thereof; and they are hereby recommended to the Governors for approval;

c. The proposed amendments to the DMCS set forth in Appendix Two are in accordance with the policies of title 39 of the United States Code and the factors set forth in § 3623(c) thereof; and they are hereby recommended to the Governors for approval.

By the Commission.

(S E A L)


Margaret P. Crenshaw
Secretary

RECOMMENDED CHANGES IN FEE SCHEDULE

The following changes represent the fee schedule recommendations of the Postal Rate Commission in response to the Postal Service's Docket No. MC99-1 Request. Proposed additions are underlined; deletions are stricken through.

FEE SCHEDULE 931
BUSINESS REPLY MAIL

| | Fee |
|--|---------------------------------|
| Active business reply advance deposit account: | |
| Per piece | |
| Qualified | \$0.05 |
| Nonletter size, using reverse manifest (experimental) | \$0.02 |
| Nonletter-size, using weight averaging (experimental) | \$0.03 <u>\$0.01</u> |
| Other | \$0.08 |
| Payment of postage due charges if active business reply mail advance deposit account not used: | |
| Per piece | \$0.30 |
| Annual License and Accounting Fees: | |
| Accounting Fee for Advance Deposit Account | \$300 |
| Permit fee (with or without Advance Deposit Account) | \$100 |
| Monthly Fees for customers using a reverse manifest or weight averaging for nonletter-size business reply | |
| Nonletter size, using reverse manifest (experimental) | \$1,000 |
| Nonletter-size, using weight averaging (experimental) | \$3,000 <u>\$600</u> |
| Set up/Qualification fee for customers using a reverse manifest or weight averaging for nonletter size business reply | |
| Nonletter size, using reverse manifest (experimental) | \$1,000 |
| Nonletter size, using weight averaging (experimental) | \$3,000 |

Note: Experimental per piece, and monthly, ~~and set up/qualification~~ fees are applicable only to participants selected by the Postal Service for the nonletter-size business reply mail experiment. The experimental fees expire ~~June 7, 1999~~ February 29, 2000, or upon implementation of permanent fees for weight-averaged nonletter-size business reply mail, whichever comes first.

RECOMMENDED CHANGES IN THE DOMESTIC MAIL CLASSIFICATION SCHEDULE

The following changes represent the changes to the Domestic Mail Classification Schedule recommended by the Postal Rate Commission in response to the Postal Service's Docket No. MC99-1 Request. Proposed additions are underlined and proposed deletions are stricken through. To avoid renumbering at this time, the designation "Reserved" is employed as appropriate. The Commission's intention is to undertake comprehensive renumbering after the experiment's extended phase is terminated.

930 **PAYMENT ALTERNATIVES**

931 **BUSINESS REPLY MAIL**

931.1 **Definitions**

931.11 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

931.12 A business reply mail piece is nonletter-size for purposes of this section if it meets addressing and other preparation requirements, but does not meet the machinability requirements specified by the Postal Service for mechanized or automated letter sortation.

This provision expires ~~June 7, 1999~~ February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

931.2 **Description of Service**

931.21 The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons and labels under any one license for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

931.3 **Requirements of the Mailer**

931.31 Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

931.32 Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons, or labels.

931.4 **Fees**

931.41 The fees for business reply mail are set forth in Fee Schedule 931.

931.42 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.

931.43 An accounting fee as set forth in Fee Schedule 931 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

931.5 **[RESERVED] Experimental Reverse Manifest Fees**

~~931.51 A set up/qualification fee as set forth in Fee Schedule 931 must be paid by each business reply mail advance deposit trust account holder at each destination postal facility at which it applies to receive nonletter size business reply mail for which the postage and fees will be accounted for through a reverse manifest method approved by the Postal Service for determining and verifying postage.~~

~~A distributor must pay this fee for each business reply mail advance deposit trust account for which participation in the nonletter size business reply mail experiment is requested.~~

~~This provision expires June 7, 1999.~~

~~931.52 A nonletter size reverse manifest monthly fee as set forth in Fee Schedule 931 must be paid each month during which the distributor's reverse manifest account is active.~~

~~This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the reverse manifest nonletter size business reply mail experiment and which utilize reverse manifest accounting methods approved by the Postal Service for determining and verifying postage and fees.~~

~~This provision expires June 7, 1999.~~

931.6 **Experimental Weight Averaging Fees**

931.61 **[RESERVED]**~~A set up/qualification fee as set forth in Fee Schedule 931 must be paid by each business reply mail advance deposit trust account holder at each destination postal facility at which it applies to receive nonletter size~~

~~business reply mail for which the postage and fees will be accounted for through a weight averaging method approved by the Postal Service for determining and verifying postage.~~

~~A distributor must pay this fee for each business reply mail advance deposit trust account for which participation in the nonletter-size business reply mail experiment is requested.~~

~~This provision expires June 7, 1999.~~

- 931.62 A nonletter-size weight averaging monthly fee as set forth in Fee Schedule 931 must be paid each month during which the distributor's weight averaging account is active.

This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the weight averaging nonletter-size business reply mail experiment.

This provision expires ~~June 7, 1999.~~ February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

931.7 **Authorizations and Licenses**

- 931.71 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Fee Schedule 931.

- 931.72 Except as provided in section 931.73, the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

- 931.73 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all business reply mail.

- 931.74 The license to mail business reply mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.
- 931.75 Authorization to pay experimental nonletter-size business reply mail fees as set forth in Fee Schedule 931 may be canceled for failure of a business reply mail advance deposit trust account holder to meet the standards specified by the Postal Service for the ~~applicable reverse manifest or weight averaging~~ accounting method.

This provision expires ~~June 7, 1999.~~ February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

RENEWAL OF EXPERIMENTAL CLASSIFICATION AND
FEES FOR WEIGHT-AVERAGED NONLETTER-SIZE
BUSINESS REPLY MAIL, 1999

Docket No. MC99-1

REVISED STIPULATION AND AGREEMENT

This Revised Stipulation and Agreement is submitted pursuant to Rule 29 of the Rules of Practice and Procedure of the Postal Rate Commission, 39 C.F.R. § 3001.29, by and between the undersigned parties or through their respective attorneys. It is a negotiated settlement of all issues raised in the above-captioned docket. The undersigned parties hereby stipulate and agree to the following:

I. BACKGROUND

On March 10, 1999, pursuant to 39 U.S.C. §§ 3622 and 3623, the United States Postal Service filed with the Postal Rate Commission a request for a decision recommending renewal of the existing experimental nonletter-size Business Reply Mail (BRM) classification and fees for which the accounting function is performed through the use of a weight averaging method. The request was designated as Docket No. MC99-1 by the Commission. The existing classification and fees for weight-averaged nonletter-size BRM were implemented by the Postal Service, on June 8, 1997, after approval by the Postal Service Governors¹ of the April 2, 1997, recommended decision

¹ See Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental Nonletter-

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of the Commission in Docket No. MC97-1. The existing experimental classification and fees are due to expire on June 7, 1999.

For the reasons explained in the Docket No. MC99-1 testimony of its witness, James Kiefer (USPS-T-1), the Postal Service requested that it be permitted to continue the weight averaging portion of the experiment until February 29, 2000, or until the permanent classification and fees which result from the litigation of Docket No. MC99-2² are implemented, whichever comes first.

II. TERMS AND CONDITIONS

1. This Revised Stipulation and Agreement represents a negotiated settlement of all issues raised by the Docket No. MC99-1 Request of the United States Postal Service for a Recommended Decision on Renewal of Experimental Classification and Fees For Weight-Averaged Nonletter-Size Business Reply Mail.

2. The undersigned parties agree, for purposes of this proceeding only, that the Docket No. MC99-1 direct testimony of Postal Service witness James Kiefer (USPS-T-1),³ which was entered into the evidentiary record on April 6, 1999, (Docket No. MC99-1, Tr. 1/14-15), and witness Kiefer's responses to interrogatories in this

Size Business Reply Mail Categories and Fees, Docket No. MC97-1 (May 5, 1997).

² On March 10, 1999, under 39 U.S.C. §§ 3622 and 3623, the Postal Service filed a request with the Commission, designated as Docket No. MC99-2, seeking to establish a permanent classification and fees for weight-averaged nonletter-size Business Reply Mail.

³ And any materials incorporated therein by reference.

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docket,⁴ and the Postal Service's Docket No. MC99-1 Request and the attachments thereto, provide sufficient reasons and substantial evidence justifying a decision recommending changes (at the end of the existing experiment expiring June 7, 1999) to the Domestic Mail Classification Schedule (DMCS) § 931 and the DMCS Fee Schedule 931 sought by the Postal Service in Docket No. MC99-1, as amended by the DMCS and Fee Schedule provisions appended to this Revised Stipulation and Agreement. The undersigned parties stipulate that any of the aforementioned materials not heretofore entered into the Docket No. MC99-1 evidentiary record be so entered.

3. On the basis of such record, for purposes of this proceeding only, the undersigned parties stipulate that the DMCS and Fee Schedule changes set forth in the Attachment to this Revised Stipulation and Agreement are in accordance with the policies of title 39, United States Code, and in particular, the criteria and factors of 39 U.S.C. §§ 3622 and 3623.

4. This Revised Stipulation and Agreement is offered in total and final settlement of this proceeding. The undersigned parties agree that they will file no further pleadings or testimony with the Commission in this proceeding, with the exception of: (a) pleadings or testimony explicitly requested by the Commission or in reply to such pleadings; (b) pleadings or testimony opposing pleadings or testimony filed in opposition to this Stipulation and Agreement; or (c) pleadings, testimony or comments in support of this Stipulation and Agreement.

⁴ The April 5, 1999, responses to OCA/USPS-T1-1 through 7; the April 7, 1999, responses to OCA/USPS-T1-8 through T1-18; and the April 16, 1999, responses to OCA/USPS-T1-19 through T1-32 (as amended on April 26, 1999), all of which have been filed with the Commission and served on the parties.

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5. If the Commission adopts a Recommended Decision that deviates from the classification and fees proposed in this Revised Stipulation and Agreement, or if the Governors of the Postal Service fail to approve the Commission's Recommended Decision, then each signatory reserves the right to withdraw from this Revised Stipulation and Agreement. Any signatory withdrawing under the terms of this paragraph must provide written notice of this fact to all parties within five (5) business days of the occurrence of the specific event giving rise to the right to withdraw. Any exercise of such right by one or more signatories shall not affect the operation of this Revised Stipulation and Agreement as to other signatories.

6. This Revised Stipulation and Agreement pertains only to the instant proceeding and does not extend to merits of the concurrent Docket No. MC99-2 proposal to establish a permanent classification and fees for weight-averaged nonletter-size Business Reply Mail. The parties shall not be considered as necessarily agreeing with or conceding the applicability of any principle, or any method of classification or ratemaking or cost of service determination, or design of rate or fee schedule or term and conditions of service, or the application of any rule or interpretation of law, that may underlie, or be thought to underlie, this Revised Stipulation and Agreement.

7. In any future negotiation or proceeding (other than any proceedings involving the honoring, enforcement, or construction of this Revised Stipulation and Agreement), the parties shall not be bound or prejudiced by this Revised Stipulation and Agreement, nor shall any party rely for any purpose on the fact that another party entered into or did not oppose this Revised Stipulation and Agreement. The undersigned parties also agree that, to the extent that matters presented in the Docket

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No. MC99-1 Request, in any Commission Recommended Decision on that Request, or in any decision of the Governors of the Postal Service in this proceeding have not actually been litigated, the resolution of such matters will not be entitled to precedential effect in any other proceeding.

8. As fully stated above, the agreement of the parties is intended to relate exclusively to the specific experimental weight-averaged nonletter-size Business Reply Mail proposals reflected in the proposed Domestic Mail Classification Schedule and Fee Schedule provisions appended hereto, and is not intended to bind or prejudice the parties in any other proceeding. This understanding of the intended consequences of the agreement applies equally to all constituent parts of the agreement.

9. The undersigned parties request that the Commission expeditiously issue a decision recommending adoption of the DMCS and Fee Schedule provisions appended to this Revised Stipulation and Agreement, and that such decision propose that the applicable classification and fees be made effective for the extension of the experiment.

10. This Revised Stipulation and Agreement represents the entire agreement of the signatories, and supersedes any understandings or representations not contained herein.

* Signature pages are attached.

**Attachment to Docket No. MC99-1
Revised Stipulation and Agreement
Proposed Domestic Mail Classification Schedule § 931
and Fee Schedule 931 Changes**

Note: The contents of this attachment to the Revised Stipulation and Agreement appear in Appendices One and Two of this Opinion and Recommended Decision. Appendix One (page 5 of the Attachment) shows changes in Fee Schedule 931. Appendix Two (pages 1-4) shows changes in the text of section 931.

Signature pages are not included here.

PARTICIPANTS AND COUNSEL

(Italicized boldface type indicates that participants signed the Revised Stipulation and Agreement)

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